



DEPARTMENT OF JUSTICE
Antitrust Division

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Steven F. Banghart, Esquire
Katten Muchen & Zavis
525 West Monroe Street
Suite 1600
Chicago, Illinois 60661-3693

Dear Mr. Banghart:

This letter responds to your request, on behalf of Chicagoland Radiological Network ("CRN"), for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.G. § 50.6, regarding CRN's proposal to form a physician network joint venture serving the Chicago area. For the reasons set forth below, the Department has no present intention of challenging CRN's proposed activities under the antitrust laws.

Based on the information provided, we understand that CRN will offer prepaid radiological services on capitated and discounted fee-for-service (with a substantial withhold) bases to third party payers and self-insured employers in an eight-county area in and around Chicago. The network will be organized as an Illinois not-for-profit corporation. CRN proposes a membership consisting of about twenty-five percent of the approximately 782 radiologists in the Chicago area.

You have represented that radiologists participating in CRN will be precluded from contracting with other radiology networks headquartered in the Chicago area. However, the CRN members will be free to contract with any other parties, including third-party payers, national radiological network brokers, and multispecialty physician network joint ventures. Third-party payers contracting with CRN will be free to

contract with other radiologists or radiologist groups as well.

CRN will accept capitation and discounted fee-for-service contracts and plans to develop utilization review/quality assurance standards as well as practice parameters. CRN also plans to develop a management information system that will allow CRN to generate physician utilization profiles. These profiles will be used as an educational tool to help modify practice patterns of referring physicians who consistently over-order radiological services.

CRN proposes several safeguards designed to address concerns about sharing of price information when it participates in discounted fee-for-service contracts. Each CRN participating physician will be expressly prohibited from disclosing any information regarding usual and customary charges or the charges he has agreed to accept under any managed care arrangement to any other CRN physician. CRN will not develop a fee schedule. Rather, each physician will receive the lesser of his usual and customary charges or the payer's fee schedule, less a substantial withhold amount (at least 20 percent) that will be distributed only after the group's cost containment goals are met. The CRN board and the contracting committee members will sign written confidentiality agreements precluding them from disclosing information regarding the fee schedule approval process or the fee schedule itself to the CRN members.

Based on the information set forth above, it appears that CRN will be a bona fide joint venture in which the participating radiologists will assume significant financial risk by participating in either capitated contracts or in the fee withhold arrangements described above. See Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust at 70-71 (Sept. 27, 1994) (1994 Joint Enforcement Policy Statement). Thus, we have analyzed CRN's proposed provider network pursuant to the rule of reason to determine if the proposed network is likely to be anticompetitive.

The rule of reason analysis of such a network focuses on whether the proposed network will create, enhance or facilitate the exercise of market power (i.e., the ability to impose supracompetitive prices or to prevent the formation of competing radiologist networks). Based on the information available to us at this time, it appears that the proposed network is not likely to be anticompetitive.

CRN's network will be one of at least two such networks in the Chicago area. Further, a national company that actively

brokers radiologist networks for Chicago area third-party payers is present in the area to form other networks, and additional radiologists are available in the area to contract separately with payers. CRN physicians will be precluded from participating in other radiology networks headquartered and/or principally administered in the Chicago area. However, this prohibition appears to be reasonably designed to prevent free-riding on CRN's management information system, which will be used in its utilization review program. Significantly, radiologists participating in CRN will remain free to contract through multi-specialty networks, independent practice associations or physician hospital organizations or to contract directly with third party payers, as a large number of radiologists in the Chicago area are already doing. Consequently, it appears that CRN members will have substantial, though not complete, freedom to affiliate with other networks or to contract individually with managed care payers.

Our investigation also indicates that CRN is unlikely to be successful if it seeks to act anticompetitively. Potential users have told us they can successfully negotiate contracts directly with members of CRN so long as there are other radiologist groups based at hospitals located within a radius of about five miles, or within a 20-30 minute drive from the hospitals where CRN members base their practices. CRN seems to have been careful in choosing the group practices involved in its network and has selected hospitals that are dispersed throughout the Chicago area. There appears to be a sufficient number of competing hospitals located nearby CRN member hospitals in the area to prevent CRN members from exercising market power in negotiating contracts with third-party payers.

Furthermore, CRN will offer significant, efficiency-related benefits for its customers. Specifically, potential CRN users with whom we spoke in the course of our investigation supported CRN's contentions that the programs CRN plans to implement will be a valuable means of helping to control costs to payers by educating referring physicians on more effective utilization of radiologist services.

The proposed CRN network entails the sharing of financial risk (through capitation and withhold funds), and it offers the prospect of significant consumer benefits. Furthermore, it does not appear to pose a significant prospect of an anticompetitive outcome. Consequently, the Department has no present intention to challenge CRN's planned radiologist joint venture network. In accordance with our normal practice, however, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if the CRN network proves to be

anticompetitive in purpose or effect.

This statement is made in accordance with the Department of Justice Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made publicly available immediately. In addition, any supporting data that you have not identified as confidential business information under paragraph 10(c) of the Business Review Procedure also will be made publicly available.

Sincerely,

/s/

Anne K. Bingaman
Assistant Attorney General